

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION**

In re: )  
JAMES F. MCAULIFFE, ) CHAPTER 7  
Debtor. ) CASE NO. 16-11089-MSH  
JOHN O. DESMOND, CHAPTER 7 )  
TRUSTEE FOR THE ESTATE OF )  
JAMES F. MCAULIFFE )  
Plaintiff, ) ADVERSARY PROCEEDING  
v. ) NO. 16-01164-MSH  
ROBIN S. GILBERT, )  
Defendant. )

**SECOND JOINT MOTION TO AMEND THE DISCOVERY PLAN**

The plaintiff John O. Desmond, the duly appointed Chapter 7 Trustee (the “Trustee”) for the bankruptcy estate of James F. McAuliffe. (the “Debtor”) and the Defendant, Robin S. Gilbert (the “Defendant”) (collectively the “Parties”) hereby move to amend the Parties’ Court-approved Discovery Plan in this case for the purpose of extending all deadlines currently set forth by an additional 30 days.

In support of this Motion, the Parties state as follows:

1. On March 28, 2016, the Debtor filed a voluntary petition pursuant to Chapter 7 of the Bankruptcy Code.
2. On March 29, 2016, the Trustee was appointed as the Chapter 7 trustee of the Debtor’s bankruptcy estate.

3. On September 15, 2016, the Trustee filed an adversary complaint against Robin S. Gilbert pursuant to Section 363(h) of the Bankruptcy Code and Rule 7001(3) of the Federal Rules of Bankruptcy Procedure (the “Adversary Complaint”).

4. On October 31, 2016, the Court issued a Pretrial Order (the “Pretrial Order”).

5. The Pretrial Order set the deadline for the completion of fact discovery for January 27, 2017.

6. On November 21, 2016, the Parties held a Rule 26(f) Conference to discuss matters set forth in the Pretrial Order.

7. On November 30, 2016, the parties filed a Joint Motion to Approve Extension of Discovery Deadline and Proposed Discovery Plan and Rule 26(f) Certification (the “Discovery Plan”).

8. On December 1, 2016, the Court allowed the Joint Motion to Approve Extension of Discovery Deadline and Discovery Plan.

9. On February 15, 2017, the Parties filed a Joint Motion to Amend the Discovery Plan [Docket No. 22], whereby the Parties sought to extend all deadlines set forth in the Discovery Plan by 60 days.

10. On February 16, 2017, the Court allowed the Parties Joint Motion to Amend the Discovery Plan.

11. Since filing the Joint Motion to Amend the Discovery Plan the Parties continue to attempt to resolve the claims asserted in the Complaint via settlement discussions.

12. The Parties are also actively seeking to reschedule depositions, in the event that settlement discussions are unsuccessful.

13. For these reasons, the Parties are seeking to amend the Discovery Plan by extending the current deadlines set forth in the Discovery Plan by an additional 30 days to provide them additional time to continue settlement discussions and schedule depositions in the event that settlement discussion are unsuccessful.

14. Therefore the Parties propose amending the current Discovery Plan deadlines as follows:

<b>Deadline</b>	<b>Current Discovery Plan Deadlines</b>	<b>Proposed Deadlines</b>
Party and Non-Party Fact Discovery	April 24, 2017	May 22, 2016
Plaintiffs Expert Report	May 6, 2017	June 5, 2017
Defendant's Expert Report	June 18, 2017	July 18, 2017
Expert Depositions	July 7, 2017	August, 7 2017
Summary Judgment	May 21, 2017	June 20, 2017
Joint Pretrial Memorandum	August 19, 2017	September 18, 2017

15. The Parties state that the requested changes to the Discovery Plan will not prejudice any party, nor will it result in any added burden on the Court.

WHEREFORE, John O. Desmond, the Chapter 7 Trustee, and Robin S. Gilbert respectfully request that this honorable Court enter an order (i) allowing the Joint Motion to Amend the Discovery Plan to extend all current deadlines in the Discovery Plan by an additional 30 days; and (ii) granting any such further relief as is just and proper.

Respectfully submitted,

**JOHN O. DESMOND, CHAPTER 7 TRUSTEE  
OF THE ESTATE OF JAMES. F. MCAULIFFE**

**By his attorneys,**

*/s/ Anthony R. Leone*

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Dated: April 20, 2017

**ROBIN S. GILBERT**

**By her attorney,**

*/s/ Gary W. Cruickshank*

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Dated: April 20, 2017

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**CERTIFICATE OF SERVICE**

I, Anthony R. Leone, of Murtha Cullina LLP, do hereby certify that on the 20th day of April, 2017, I served a copy of the within ***Second Joint Motion to Amend the Discovery Plan*** through the ECF system to registered participants.

/s/Anthony R. Leone  
Anthony R. Leone